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**UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
(Honorable M. James Lorenz)**

18 On September 23, 2011, Magistrate Judge Dembin issued an order on the Parties' Joint  
19 Motion for Determination of Discovery Dispute [Dkt. #43]. The Magistrate Judge ordered  
20 Defendants to provide certain discovery they had resisted. Defendant O'Keefe filed an Objection  
21 to the Magistrate Judge's order with respect to two areas: 1) his prior media publications related  
22 to nonconsensual recordings; and 2) and payments O'Keefe received from Andrew Breitbart.  
23 These narrowly tailored discovery requests made by the Plaintiff are legitimate subjects of  
24 discovery.

First, Plaintiff narrowed the scope of discovery to O’Keefe’s publications related to nonconsensual recordings. O’Keefe asserted in his Motion to Dismiss that “journalistic enterprise, when the subject matter, as it often will be, is one of public concern, may be essential to serve core First Amendment values.” [Dkt. #20 p. 23] Despite this alleged defense that he

1 was entitled to secretly record people due to his “journalistic efforts,” O’Keefe’s claim to be a  
2 “journalist” varies with each pleading he makes. In any event, his previous statements regarding  
3 nonconsensual (and illegal in California, Maryland and Pennsylvania) recordings are relevant in  
4 this case in which he nonconsensually recorded Plaintiff.

5 As to the issue of Andrew Breitbart, O’Keefe asserts that the payments he received from  
6 Breitbart and the communication between them are “private matter.” Plaintiff has the right to  
7 determine who else, if anyone, planned, supported or was involved in the commission of this tort.  
8 Payments from the person who disseminated the illegal recording of Plaintiff are clearly relevant  
9 to that issue.

10 Plaintiff incorporates the arguments set forth fully in his Objection to the Order [Dkt.  
11 #44] and respectfully requests this Court require Defendant O’Keefe to respond to Plaintiff’s  
12 discovery requests.

13 Respectfully submitted,

14  
15 Dated: October 21, 2011

/s/ Eugene G. Iredale  
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